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Filing date: **05/11/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91203884
Party	Plaintiff Ennis, Inc.
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Signature	/s/ Scott A. Meyer
Date	05/11/2012
Attachments	Ltr to TTAB 2012.5.11.pdf ( 1 page )(276821 bytes ) Answer v2012.5.07.pdf ( 6 pages )(25653 bytes ) Registrant's Motion to Strike Petition to Cancel.pdf ( 5 pages )(25962 bytes ) Exhibits 1-3.pdf ( 4 pages )(134580 bytes )

# CHALKER FLORES, LLP

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May 11, 2012

*Via ESTTA*

Elizabeth Dunn, Esq.  
Trademark Trial and Appeal Board  
U.S. Patent and Trademark Office  
P.O. Box 1451  
Alexandria, VA 22313-1451

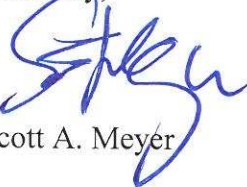
*Re: Ennis, Inc. v. Joel L. Beling d/b/a Supa Characters Pty Ltd*  
Application Serial No. 85/324,443; Opposition No. 91203884

Dear Ms. Dunn:

Pursuant to your directive given at the parties' discovery conference in the above referenced matter, and further pursuant to the Board's communication dated April 26, 2012, please allow this correspondence to serve as written notice to the Board that our client, Ennis, Inc., has filed its Answer in the cancellation matter currently pending before the Board as *Joel L. Beling d/b/a Supa Characters Pty Ltd v. Ennis, Inc.; Cancellation No. 92055374*. A copy of Ennis, Inc.'s Answer and Ennis, Inc.'s Motion for More Definite Statement or, in the Alternative, Motion to Strike in the cancellation matter is enclosed for your reference.

As you will note, the Answer filed by Ennis, Inc. was filed subject to, and without waiving, the relief requested by Ennis in its Motion for More Definite Statement or, in the Alternative, Motion to Strike.

Sincerely,



Scott A. Meyer

SAM/cm  
Attachments

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Joel L. Beling d/b/a Supa Characters Pty Ltd,	)	
	)	
Petitioner,	)	
	)	
v.	)	Cancellation No. 92055374
	)	
Ennis, Inc.	)	
	)	Registration No. 3,372,884
	)	Mark: COLORWORX
Registrant.	)	
	)	

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**ANSWER TO PETITION TO CANCEL**

Registrant, ENNIS, INC., by and through its undersigned counsel, and subject to, without waiving, its Motion for More Definite Statement or, in the Alternative, Motion to Strike, hereby responds to the Petition to Cancel as follows:

**I.**

**PRELIMINARY STATEMENT**

Any factual allegation admitted to herein is admitted only as to the specific facts in question and not as to any purported conclusions, characterizations, implications or speculations drawn therefrom, wherever stated in the Petition to Cancel. Further, the denial of any factual allegation herein may not be construed as an admission of the negative of such allegation.

Registrant denies each and every allegation contained in the Petition to Cancel except as specifically admitted, qualified or otherwise responded to herein. Registrant's Answer below is organized to track the structure of the Petition to Cancel for purposes of convenience and ease of reference only. Registrant specifically denies any and all allegations contained in headings or unnumbered paragraphs in the Petition to Cancel, if any.

## **II.**

### **ORIGINAL ANSWER**

With regard to the introductory paragraph, Registrant lacks knowledge or information sufficient to form a belief as to the truth of the allegations regarding Petitioner's citizenship or information and therefore denies those allegations, admits that Petitioner has filed the instant Petition to Cancel, admits that Registrant's place of business is stated correctly, and otherwise denies the remaining allegations in the introductory paragraph.

### **ANSWER TO COUNT I**

1. Registrant denies the allegations contained in paragraph 1 of the Petition to Cancel.

2. With regard to the allegations contained in paragraph 2 of the Petition to Cancel, Registrant admits only that the U.S. Registration Number is 3,372,884. Registrant denies all other allegations contained in paragraph 2 of the Petition to Cancel.

3. Registrant denies the allegations contained in paragraph 3 of the Petition to Cancel.

4. Registrant denies the allegations contained in paragraph 4 of the Petition to Cancel.

5. Registrant denies the allegations contained in paragraph 5 of the Petition to Cancel.

6. Registrant denies the allegations contained in paragraph 6 of the Petition to Cancel.

7. Registrant denies the allegations contained in paragraph 7 of the Petition to Cancel.

8. Registrant denies the allegations contained in paragraph 8 of the Petition to Cancel.

9. Registrant denies the allegations contained in paragraph 9 of the Petition to Cancel.

10. Registrant is without knowledge or information sufficient to form a belief as to the statements contained in paragraph 10 of the Petition to Cancel and therefore denies same.

11. Registrant denies the allegations contained in paragraph 11 of the Petition to Cancel.

12. Registrant denies the allegations contained in paragraph 12 of the Petition to Cancel.

### **ANSWER TO COUNT II**

13. To the extent a response is required, Registrant denies the allegations.

14. Registrant denies the allegations contained in paragraph 14 of the Petition to Cancel.

15. Registrant denies the allegations contained in paragraph 15 of the Petition to Cancel.

16. Registrant denies the allegations contained in paragraph 16 of the Petition to Cancel.

17. Registrant denies the allegations contained in paragraph 17 of the Petition to Cancel.

18. Registrant denies the allegations contained in paragraph 18 of the Petition to Cancel.

19. Registrant denies the allegations contained in paragraph 19 of the Petition to Cancel.

20. Registrant denies the allegations contained in paragraph 20 of the Petition to Cancel.

21. Registrant denies the allegations contained in paragraph 21 of the Petition to Cancel.

### **ANSWER TO COUNT III**

22. To the extent a response is required, Registrant denies the allegations.

23. Registrant denies the allegations contained in paragraph 23 of the Petition to Cancel.

24. Registrant denies the allegations contained in paragraph 24 of the Petition to Cancel.

25. Registrant denies the allegations contained in paragraph 25 of the Petition to Cancel.

26. Registrant denies the allegations contained in paragraph 26 of the Petition to Cancel.

27. Registrant denies the allegations contained in paragraph 27 of the Petition to Cancel.

28. Registrant denies the allegations contained in paragraph 28 of the Petition to Cancel.

### **ANSWER TO PRAYER**

29. To the extent that a response is required, Registrant denies the allegations contained in Petitioner's prayer of the Petition to Cancel.

### **III.**

#### **AFFIRMATIVE DEFENSES**

30. Petitioner has not and will not be damaged by the mark COLORWORX and therefore lacks standing to petition for the cancellation of the registration at issue in this action.

31. Petitioner's Petition to Cancel fails to state any claim upon which relief may be granted.

32. Petitioner is barred from seeking cancellation of Registrant's mark COLORWORX under the doctrines of laches, estoppel and waiver.

33. Through Registrant's long, substantial and widespread use, advertising and promotion in support of its mark COLORWORX, said mark has acquired a strong secondary meaning identifying the services provided by Registrant.

34. Petitioner has failed to state specifically and cannot state specifically any actual damages by virtue of Registrant's continued registration of its mark COLORWORX.

35. Petitioner has unclean hands and proceeds in bad faith because Petitioner is attempting to appropriate the goodwill of Registrant's mark COLORWORX.

### **IV.**

#### **PRAYER**

WHEREFORE, PREMISES CONSIDERED, Registrant prays that the Petition to Cancel be dismissed with prejudice and that Registrant be awarded all other relief to which it is entitled, both at law and in equity.

Dated: May 7, 2012

Respectfully submitted,

CHALKER FLORES, LLP

By: /s/Scott A. Meyer

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**ATTORNEYS FOR REGISTRANT**

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing ANSWER TO PETITION TO CANCEL was served on all counsel of record, this the 7<sup>th</sup> of May, 2012, by sending the same via electronically through the Electronic System for Trademark Trials and Appeal ("ESTTA") and electronic mail service.

/s/Scott A. Meyer

Scott A. Meyer



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Joel L. Beling d/b/a Supa Characters Pty Ltd,	)	
	)	
Petitioner,	)	
	)	
v.	)	Cancellation No. 92055374
	)	
Ennis, Inc.	)	
	)	Registration No. 3,372,884
	)	Mark: COLORWORX
Registrant.	)	
	)	

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**REGISTRANT’S MOTION FOR MORE DEFINITE STATEMENT  
OR, IN THE ALTERNATIVE, MOTION TO STRIKE**

Registrant, ENNIS, INC. (“Registrant”), by and through its undersigned counsel and pursuant to Rules 12(e) and 12(f) of the Federal Rules of Civil Procedure, hereby files this Motion for More Definite Statement or, in the Alternative, Motion to Strike and would show the Board as follows:

1. Applicant Joel L. Beling d/b/a Supa Characters Pty Ltd (“Applicant”) filed his Petition to Cancel (“Petition”) with the United States Patent and Trademark Office Trademark Trial and Appeal Board (“TTAB”) on or about March 23, 2012, by filing same electronically through the Electronic System for Trademark Trials and Appeals (“ESTTA”). Applicant’s Petition is deficient for numerous reasons, as detailed herein.

2. The Petition is so vague that Registrant cannot file a meaningful responsive pleading. A motion for a more definite statement is proper when a petition is so vague or ambiguous that the respondent cannot reasonably prepare a response. Fed.R.Civ.P. 12(e); *Sisk v. Tex. Parks & Wildlife Dept.*, 644 F.2d 1056, 1059 (5<sup>th</sup> Cir. 1981); *see* Fed.R.Civ.P. 8(a)(2).

Applicant served Registrant's counsel with a copy of the Petition via electronic mail pursuant to agreement of the parties, which email also included numerous attachments, most of which were not in a format acceptable to TTAB, and many of which do not show the full content when Registrant attempts to view them. Additionally, the copies of the Petition exhibits emailed to Registrant do not match the exhibits filed with TTAB through the ESTTA.

3. Applicant specifically refers to eight (8) exhibits on Page 13 of his Petition to Cancel. However, Applicant sent, via electronic mail, 19 separate attachments to the Petition to Cancel as follows:

- (a) 2 Word documents (Exhibits A and B);
- (b) 4 Outlook files with no identifiable exhibit tags; and
- (c) 13 HTML documents with no identifiable exhibit tags.

See the Directory list showing the attachments to the Petition to Cancel attached hereto and incorporated herein by reference as Exhibit 1. After notice by Registrant of such deficiencies, Petitioner sent, via electronic mail, documents referenced in such email to be Exhibits C-F, with attachments identified as Exhibits C-H. However, Petitioner has not amended its Petition and alleged exhibits to such Petition. The Petition filed with TTAB remains deficient and does not match the copies of the Petition and alleged exhibits served on Registrant by Petitioner.

4. To further complicate matters, several of the HTML documents, which should open automatically with the use of software such as Internet Explorer, do not open properly and do not show images. For example, the HTML file listed first in Exhibit 1, "Affordable Four Color Process Commercial Printing Colorworx<sup>®</sup>", opens as blank text boxes, with no text and no images. See the web page example attached hereto and incorporated herein by reference as Exhibit 2. Petitioner's Exhibit C: "results of Google Search of 'Color Works'" also does not

operate properly and images and words do not display. See HTML web page of Exhibit C attached hereto and incorporated herein by reference as Exhibit 3. Such document simply defers to the home page for Google in Australia. None of these documents were filed in the proper format required by ESTTA.

5. Further, Applicant refers to Exhibits F, G and H as Printouts. However, they are actually HTML files. Specifically, Applicant cannot determine which HTML files belong to several Exhibits. Some of them are identifiable, but Applicant's Exhibit List titles do not match the descriptions in the Petition to Cancel nor do they match the HTML files that will operate and open properly.

6. The TTAB Manual and Procedure ("Manual") requires that "[e]xhibits submitted with a pleading must conform to the requirements of 37 CFR 2.126." See Page 300-193 of Chapter 300 Pleadings. The Manual further states that "[e]xhibits pertaining to an electronic submission must be made electronically as an attachment to the submission." See 106.03(c) of the Manual at page 100-13. TTAB accepts filings in the form of PDF (preferred), TIFF or TXT. Applicant failed to submit any of those attachments at the time of filing the Petition to Cancel, the attachments filed with TTAB were largely inoperable or in an unacceptable file format, and the subsequent service of exhibits to Registrant without an amendment of Petitioner's Petition means Registrant now has been served a version of the Petition that substantially differs from the Petition on file with TTAB.

7. Last, although Applicant provided Registrant's counsel with copies of the Petition to Cancel and the attachments electronically, the only attachments marked as exhibits to the Petition filed with TTAB were the Word documents identified as Exhibits A and B. Some of the other exhibits listed on Page 13 are descriptive enough for Registrant to make educated guesses

to determine which attachments represent those exhibits, but again, they are not marked, and many are not fully visible.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Registrant prays that Petitioner be required to replead by required amendment or, in the alternative, that the Petition to Cancel be dismissed with prejudice and that Registrant be awarded all other relief to which it is entitled, both at law and in equity.

Dated: May 7, 2012

Respectfully submitted,

CHALKER FLORES, LLP

By: /s/Scott A. Meyer

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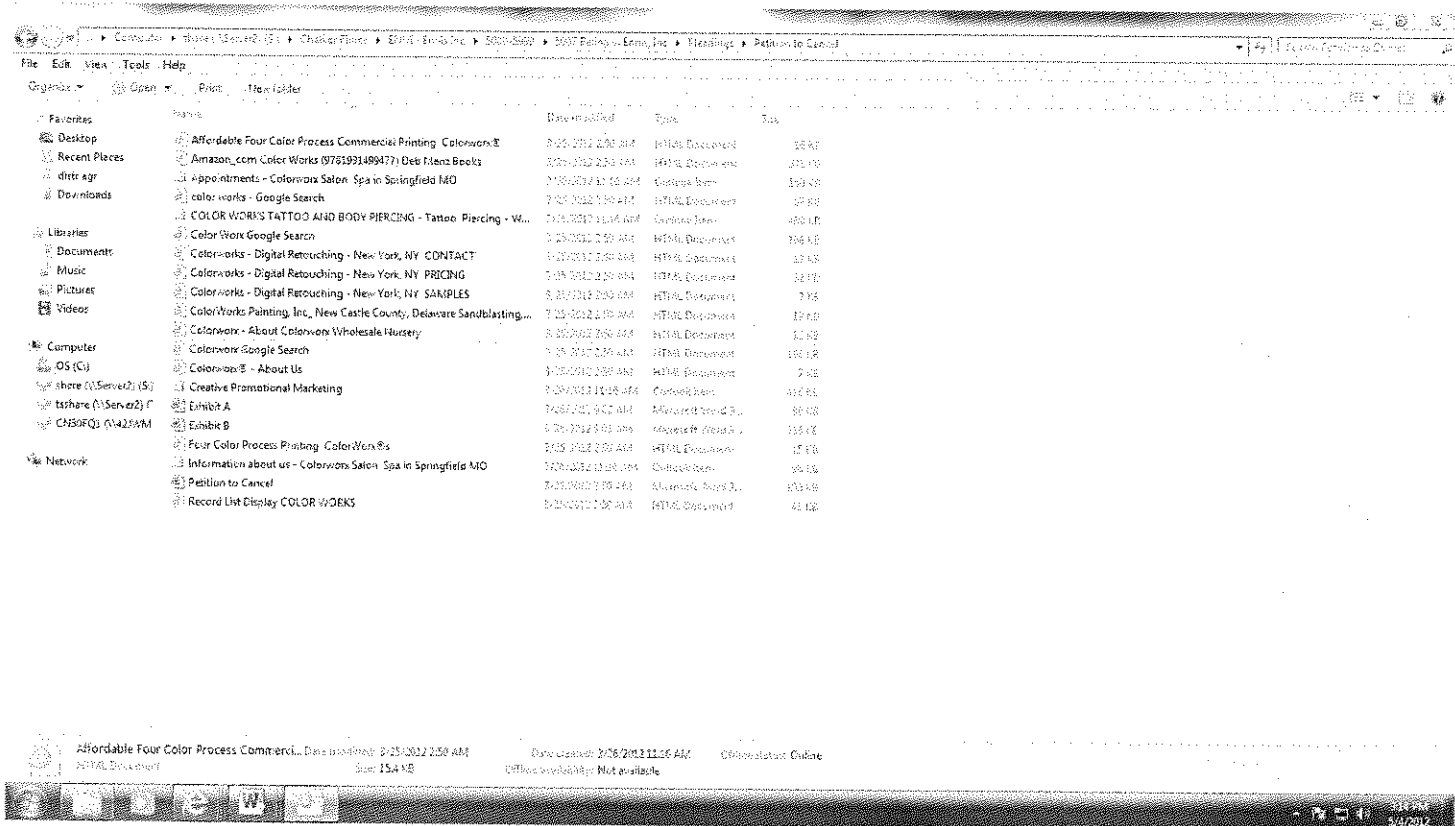
**ATTORNEYS FOR REGISTRANT**

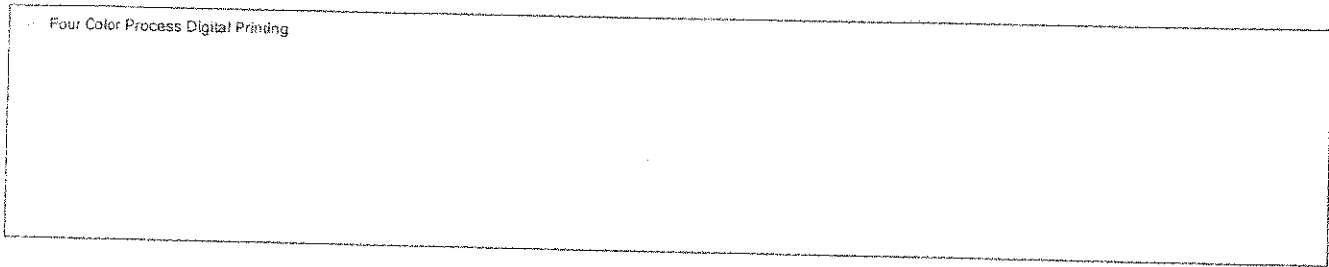
**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing REGISTRANT'S MOTION FOR MORE DEFINITE STATEMENT OR, IN THE ALTERNATIVE, MOTION TO STRIKE was served on all counsel of record, this the 7<sup>th</sup> of May, 2012, by sending the same via electronically through the Electronic System for Trademark Trials and Appeal ("ESTTA") and electronic mail service.

/s/Scott A. Meyer

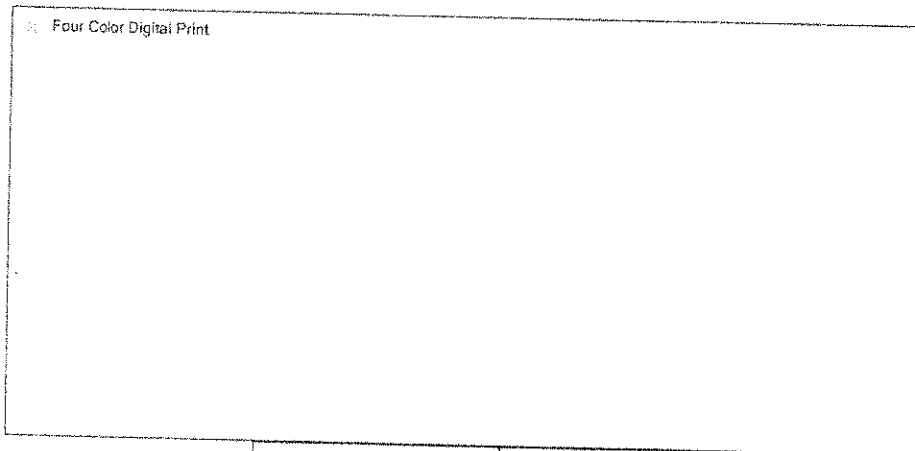
Scott A. Meyer





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